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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/526,602	03/09/2005	Rodney B. Beach	1004 100095	5820

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FELIX L. FISCHER, ATTORNEY AT LAW
1607 MISSION DRIVE
SUITE 204
SOLVANG, CA 93463

EXAMINER

JOHNSON, STEPHEN

ART UNIT	PAPER NUMBER
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3641

NOTIFICATION DATE	DELIVERY MODE
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09/25/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

felixfischer@fischeriplaw.com

Office Action Summary	Application No. 10/526,602	Applicant(s) BEACH ET AL.	
	Examiner Stephen M. Johnson	Art Unit 3641	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 June 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) 2-4, 6-8 and 10-29 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 5 and 9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-29 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 March 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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1. Applicant's election with traverse of species B (figs. 3a-3c) in the reply filed on 5/8/2009 is acknowledged. The traversal is on the ground(s) that the different embodiments as disclosed in figs. 4-8; 17a, 17b, 18; 15, and 16a-16c; and/or 20a-20i and 21 are merely exemplary applications of a generic device. In response, the examiner has never taken the position that there are not claims that are generic to all species. However, this fact has no bearing upon the appropriateness of the restriction requirement unless a generic claim is found to be allowable and all of the claims of the other species depend from this allowable generic claim. Further, each of the different species is explicitly described as **alternative embodiments** (see pages 4-6 of the written description) and are certainly not accurately described as examples of the elected species B. Further, the different species each teach alternative patentably distinguishable; mutually exclusive features and as such restriction is appropriate. Further, if applicant wishes to state for the record that the different features (e.g. break screen 13 with detonators 14; attachment to a HMMWV vehicle; application in combination with a helicopter) are features that do not patentably distinguish, he should do so. Otherwise, the different embodiments as characterized clearly qualify as **separate, patentably distinguishable species** and/or alternative embodiments as described in the written description.

The requirement is still deemed proper and is therefore made FINAL.

Claims 1, 5, and 9 read on the elected species B and an action on these claims follows. Claims 2-4, 6-8, and 10-29 are withdrawn from consideration as being directed to non-elected species. Claim 2 is not directed to the elected species B because of the claim limitations directed to a plurality of primacord lines mounted in parallel spaced relation.

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2. Claims 1, 5, and 9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, claim elements “means for sensing” and “means for detonating” are means (or step) plus function limitation that invokes 35 U.S.C. 112, sixth paragraph. However, the written description fails to clearly link or associate the disclosed structure, material, or acts to the claimed function such that one of ordinary skill in the art would recognize what structure, material, or acts perform the claimed function.

Applicant is required to:

(a) Amend the claim so that the claim limitation will no longer be a means (or step) plus function limitation under 35 U.S.C. 112, sixth paragraph; or

(b) Amend the written description of the specification such that it clearly links or associates the corresponding structure, material, or acts to the claimed function without introducing any new matter (35 U.S.C. 132(a)); or

(c) State on the record where the corresponding structure, material, or acts are set forth in the written description of the specification that perform the claimed function. For more information, see 37 CFR 1.75(d) and MPEP §§ 608.01(o) and 2181.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. Claims 1, 5, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Manis (148) in view of in re Dike, 157 USPQ 581 (CCPA 1968).

Manis (148) discloses an explosive round countermeasure system comprising:

- a) an array of charges; 108, 110
- b) means for sensing that includes a break screen; 98, 112, 114
- c) means for detonating the charges; col. 5, lines 36-67
- d) detonation at a time when the nose of the projectile is adjacent to the shaped charge; and see fig. 4
- e) a shock absorbing impact surface. 134 or 142

With regard to the claim limitations directed to timing the detonation when the fuse structure of is adjacent to charge array, note that claim limitations directed to the way in which an apparatus is made and/or used are not limiting in the confines of an apparatus claim (see in re Dike).

5. Claims 1, 5, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Manis (148) in view of Laures (647).

Manis (148) discloses an explosive round countermeasure system comprising:

- a) an array of charges; 108, 110
- b) means for sensing that includes a break screen; 98, 112, 114
- c) means for detonating the charges; col. 5, lines 36-67
- d) detonation at a time when the nose of the projectile is adjacent to the shaped charge; and see fig. 4
- e) a shock absorbing impact surface. 134 or 142

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Manis (148) applies as recited above. However, undisclosed is a proximity fuse located in the nose portion of the missile. Laures (647) teaches a proximity fuse located in the nose portion of the missile (8, see fig. 2). Applicant is substituting one missile or projectile for another in an analogous art setting with expected or predictable results. It would have been obvious to a person of ordinary skill in this art at the time of the invention to apply the teachings of Laures to the Manis countermeasure system and have a countermeasure system that uses a particular type of missile or projectile.

6. Claims 1 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kerdraon et al. (955) in view of in re Dike, 157 USPQ 581 (CCPA 1968).

Kerdraon et al. (955) disclose an explosive round countermeasure system comprising:

- a) an array of charges; 6a to 6d
- b) means for sensing that includes a break screen; 17a to 17d
- c) means for detonating the charges; and see fig. 4
- d) detonation at a time when the nose of the projectile is adjacent col. 4, lines 26-53
to the shaped charge.

With regard to the claim limitations directed to timing the detonation when the fuse structure of is adjacent to charge array, note that claim limitations directed to the way in which an apparatus is made and/or used are not limiting in the confines of an apparatus claim (see in re Dike).

7. Claims 1 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kerdraon et al. (955) in view of Laures (647).

Kerdraon et al. (955) disclose an explosive round countermeasure system comprising:

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- a) an array of charges; 6a to 6d
- b) means for sensing that includes a break screen; 17a to 17d
- c) means for detonating the charges; and see fig. 4
- d) detonation at a time when the nose of the projectile is adjacent col. 4, lines 26-53
to the shaped charge.

Kerdraon et al. (955) apply as recited above. However, undisclosed is a proximity fuse located in the nose portion of the missile. Laures (647) teaches a proximity fuse located in the nose portion of the missile (8, see fig. 2). Applicant is substituting one missile or projectile for another in an analogous art setting with expected or predictable results. It would have been obvious to a person of ordinary skill in this art at the time of the invention to apply the teachings of Laures to the Kerdraon et al. countermeasure system and have a countermeasure system that uses a particular type of missile or projectile.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen M. Johnson whose telephone number is 571-272-6877 and whose e-mail address is (Stephen.Johnson@uspto.gov). The examiner can normally be reached on Tuesday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 571-272-6873. The Central FAX phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 800-786-9199.

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/Stephen M. Johnson/
Primary Examiner, Art Unit 3641

SMJ
September 22, 2009